

Remarks

Reconsideration of this Application is respectfully requested.

Claims 7 and 13 are pending in the application, with claims 7 being the only independent claim. Amendments have not been made to either claim. The specification has been amended to add the reference to prior U.S. applications.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 102

Claims 7 and 13 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 4,862,767 to Hauser. Applicants respectfully traverse the rejection.

Independent claim 7 recites a hydrostatic transmission is disposed within the same housing as the axles. The Hauser '767 patent does not disclose such an arrangement.

Instead the hydrostatic transmission of the Hauser '767 patent is bolted to the axle housing. Further, the Hauser '767 patent does not disclose pinion gears disposed within a ring gear or that the ring gear is supported by the axles, as also recited in independent claim 7. Accordingly, because the Hauser '767 patent does not disclose every feature recited in independent claim 7, it does not anticipate claim 7.

Claims 7 and 13 were also rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 4,870,820 to Nemoto. Applicants respectfully traverse the rejection. With respect to claim 7, the present application claims priority under 35 U.S.C. § 120 back to the February 1, 1989 filing date of U.S. Application No. 07/304,581. Priority under 35 U.S.C. § 119 is claimed to Japanese Patent Application No. 63-24193, filed

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February 3, 1988. A certified translation of the Japanese application was filed in the interferences. The February 3, 1988 Japanese application discloses every element of claim 7 of the present application. The Nemoto '820 application was filed on April 8, 1988. Accordingly, it is not prior art to the present application under 35 U.S.C. § 102(e).

Further, the Nemoto '820 application does not disclose that the hydrostatic transmission is in the same housing as the axles, as the pump is mounted to the outside of the housing.

While the February 3, 1988 application does not disclose the subject matter of claim 13, claim 13 is patentable over the Nemoto '820 patent at least for the reasons discussed above regarding the location of the hydrostatic transmission. Further, the Nemoto '820 patent does not disclose that the hydraulic pump is located between the hydraulic motor and the axles, as recited in claim 13. Accordingly, the Nemoto '820 application is not prior art to claim 7 of the present application and does not disclose every feature of claims 7 and 13. Therefore, the Nemoto '820 patent does not anticipate claims 7 and 13.

Claims 7 and 13 were also rejected under 35 U.S.C. § 102(f) because the Examiner alleges that the Applicants did not invent the subject matter of the invention. Applicants respectfully traverse the rejection. The claim in Interference No. 104,311 did not include the recitation of "a pair of pinion gears disposed within said ring gear and coupled to said pair of bevel gears, whereby said ring gear is supported within said housing by said pair of axles", as recited in claim 7. The declarations presented in the interferences do not address this feature. To the contrary, the declarations address Exhibit 1140 from the interference, in particular, item 2 of Exhibit 1140. Item 2 of Exhibit 1140 does not disclose this feature of claim 7. Further, in accordance with the

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Board's decision in Interference No. 104,496, finding that claim 13 of Application No. 08/818,964 involved in the interference to be unpatentable, a hydrostatic transmission disposed in the same housing with the axles was determined by the Board to be part of the prior art. Contributors of subject matter in the prior art are not inventors. The combination of references used by the Board in reaching its decision that claim 13 of the '864 application was not patentable included gearing, the feature that the Examiner now relies upon for asserting that the Applicants did not invent the subject matter of the present claims. Because the art relied upon by the Board included gearing, contributors of gearing generally, would not be inventors. As to the specific feature of the differential recited in claim 7, Mr. Okada, one of the named inventors of the present application, invented the pair of pinion gears disposed within the ring gear and coupled to the pair of bevel gears, whereby the ring gear is supported within the housing by the axles, as recited in claim 7. Accordingly, inventorship with respect to claim 7 is proper. Further, the declarations from the interference also show that it was Mr. Nemoto's invention to place the pump between the motor and the axles. This fact is also confirmed by the fact that Mr. Nemoto was only named as a co-inventor in priority Japanese Patent Application No. 63-79665, which discloses such an arrangement. Applicants would be happy to provide copies of the documents from the interferences at the Examiner's request, or to meet with the Examiner to review these issues.

In accordance with the reasoning provided above, Applicants respectfully request that the rejections be withdrawn.

Information Disclosure Statement

Applicants thank the Examiner for noting that he would consider the references listed in the Information Disclosure Statement filed March 16, 2001. Applicants respectfully request that the Examiner initial the Form PTO-1449 when these references have been considered, and return a copy to Applicants' representative.


Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully
requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read 'A. Ferro', followed by a horizontal line.

Albert L. Ferro
Attorney for Applicants
Registration No. 44,679

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1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600